

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

HARRY VAN GREENHOVEN,
Appellant

v.

Docket No. G2-06-40

DEPARTMENT OF WORKFORCE
DEVELOPMENT¹,
Respondent

Appellant's Representative:

Pro Se
Harry Van Greenhoven



Respondent's Representative:

Roberta B. Newcomb
Department of Labor Relations
Department of Workforce Development
Charles F. Hurley Building
19 Staniford Street
Boston, MA 02114
(617) 626-5111

Commissioner:

John E. Taylor

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

Pursuant to the provisions of G.L. c. 31, §2(b), the Appellant, Harry Van Greenhoven, (hereafter "Appellant" or "Van Greenhoven") appealed an action of the Department of Workforce Development (hereafter "the Department" or "Appointing Authority"), claiming that he was bypassed for promotion to a Buyer IV position and seeking the

¹ Department of Workforce Development includes the Division of Career Services and the Division of Unemployment Assistance.

opportunity to be considered for such position. On June 9, 2006, the Department submitted a Motion to Dismiss. The Appellant submitted a Rebuttal to the Motion to Dismiss on June 26, 2006. A pre-hearing conference was held at the offices of the Civil Service Commission on March 15, 2006.

Factual Background

The Appellant is a Buyer III in Respondent's Administration and Finance Department, Contracts and Procurement Office. On or about January 15, 2006, upon the request of a manager, the Respondent completed a review of another employee in a Buyer III position in the Contracts and Procurement office. This employee's position was subsequently reclassified as a Buyer IV, effective October 1, 2005, based upon an updated Form 30 which identified significant job changes to the employee's position and revealed that he was working outside of his current job description as a Buyer III. On February 28, 2006, the Appellant filed a bypass appeal claiming that he was bypassed for a promotional appointment due to being denied the opportunity to apply for the Buyer IV position.

Respondent's Grounds for Dismissal

The Respondent argues that this was not a bypass situation as at no time relevant to the matter was there a vacant Buyer IV position within the Department for which Appellant was bypassed. Rather, the Respondent maintains that it conducted a reclassification of another Buyer III in the Appellant's department in accordance with Article 17 of the Commonwealth of Massachusetts and the National Association of Government Employees, Unit Six, Collective Bargaining Agreement, (the "collective bargaining agreement"). It explains that the reclassification process indicated that the other employee's additional significant job duties warranted a reclassification of his

position to Buyer IV. The Respondent further states that in keeping with this action, no Buyer IV position was either advertised or filled.

The Appellant argues that this *is* a bypass situation. He contends that there was a vacant Buyer IV position that, in violation of civil service requirements, was never posted, thus denying him an opportunity to apply for the position. The Appellant asserts that the Respondent undertook the reclassification to prevent him from applying for the position and notes that this circumvention of civil service requirements prevented him from using his disabled Vietnam Veteran preference.

Section 2 of HRD's Personnel Administration Rules (PAR.02) defines a bypass as:

“the selection of a person or persons whose name or names, by reason of score, merit preference status, court decree, decision on appeal from a court or administrative agency, or legislative mandate appear lower on a certification than a person or persons who are not appointed and whose names appear higher on said certification.”

The evidence shows that this matter involves a reclassification and not a bypass. A January 13, 2006 letter to the co-worker whose reclassification is the subject of the Appellant's appeal states that the Human Resources Department of the Division of Career Services/Division of Unemployment Assistance, after conducting a review of the duties and responsibilities of his position, found that the duties he is performing are commensurate with the Buyer IV Classification Specification. Accordingly, the position was reclassified from a Buyer III to Buyer IV. This letter supports the Respondent's contention that the Appellant was not bypassed.

An important purpose of the civil service system is assuring that all employees are protected against arbitrary and capricious actions. See Callanan v. Personnel Adm'r for Comm, 400 Mass. 597 (1987). Here, an examination of the circumstances involved in a

Buyer III being reclassified to a Buyer IV position does not show any arbitrary or capricious actions were undertaken by the Respondent against the Appellant.

The Respondent also argues that the Appellant failed to exhaust his administrative remedies prior to filing his appeal with the Civil Service Commission. It states that pursuant to agency procedure and Article 17 of the collective bargaining agreement, an employee may seek an evaluation of his or her current job duties in relation to his or her classification, with the first step being the submission by the employee or his supervisor of an appeal form to the Agency seeking an appeal of his classification to the Human Resources Department (“HRD”). The Agency then conducts a desk audit of the requesting employee’s position, which may include an interview with the employee and his manager. The *agency’s* HRD subsequently issued a written determination informing the employee if the position has been reclassified. If the employee is not satisfied with the agency’s determination, he must first file an appeal with the *state’s* Human Resources Division, which will review the Agency’s decision and issue its own determination.

The Appellant has not exhausted his administrative remedies as required and his appeal should be dismissed by the Commission. See , e.g. Lincoln v. Personnel Administrator of Department of Personnel Admin, 432 Mass. 208 (2000). The Appellant’s appropriate remedy in this circumstance, if he believes he was aggrieved by the Respondent’s decision to reclassify a co-worker’s position and that he is performing the same tasks as the co-worker, is to apply for re-classification of his Buyer III with the Agency pursuant to Article 17, Classification and Reclassification, of the applicable Collective Bargaining Agreement.

Conclusion

The Respondent's Motion to Dismiss is allowed and the Appellant's appeal filed under Docket G2-06-40 is hereby dismissed.

Civil Service Commission

John E. Taylor, Commissioner

By vote of the Civil Service Commission (Bowman, Taylor, Guerin and Marquis, Commissioners) on May 3, 2007.

A True copy. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Harry Van Greenhoven
Roberta B. Newcomb